Order Code RL33179

CRS Report for Congress
Received through the CRS Web

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI): Proposed Changes to the Disability Determination and Appeals Processes

December 6, 2005

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Social Security Disability: Proposed Changes to the Disability Determination and Appeals Processes

Summary

The Social Security Administration (SSA) maintains multi-stage determination and appeals processes for applications to the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. These processes begin with an initial determination of disability by a state agency, followed by multiple opportunities for administrative appeals. Unsuccessful applicants are also entitled to appeal their decisions to the federal courts.

These processes have been criticized by the SSA, the Social Security Advisory Board, the Governmental Accountability Office, and others for the timeliness of the final decision, for rendering initial decisions that are reversed on appeal, and for inconsistency across states.

In response to these criticisms, the SSA recently proposed changes to the disability determination and appeals processes. These changes would allow clearly disabled applicants to get a final decision in 20 days and would bring in-line and end-of-line quality reviews into the processes. The reconsideration stage would be replaced with a review by a federal official and the Appeals Council would be replaced by a board that would review cases likely to contain errors.

Critics of these reforms have expressed concerns that the changes would put additional procedural burdens on persons with disabilities and make it more difficult for them to navigate the system and have all of the evidence in support of their cases heard.

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Introduction

This report explains the large and complex system used by the Social Security Administration (SSA) to determine eligibility for disability benefit programs and to adjudicate disputes that arise from these determinations. Persons with disabilities in each congressional district are affected by this system. In addition, the fact that initial decisions are often reversed on appeal and the length of the appeals process places burdens on the Social Security Disability Insurance Trust Fund and the general revenue of the United States.

The disability determination and appeals processes used by the SSA have been called the "largest system of administrative adjudication in the Western world."[1] In Fiscal Year (FY) 2004, the SSA and its network of state disability determination services processed more than 2.4 million initial Social Security Disability Insurance (SSDI) applications and more than 2.2 million applications for Supplemental Security Income (SSI) benefits. That same year, the 944 SSA Administrative Law Judges issued rulings on 495,029 appeals of initial disability determinations and the SSA Appeals Council ruled on 97,701 appeals of Administrative Law Judge decisions.[2]

The number of cases appealed, and the number of these cases that result in a reversal of the initial determination, indicate that in many cases, persons with disabilities who meet the statutory eligibility requirements for the SSDI or SSI programs may not receive the benefits to which they are entitled. These claimants are then forced into the complex and multi-layered appeals system with its own procedural rules and quasi-judicial framework. For some applicants, a final decision on their claim can take several years.

Decisions that are reversed on appeal and the length and complexity of the appeals process increase the administrative costs paid by the SSA. In the case of SSDI applicants, these costs are paid out of the Social Security Disability Trust Fund and are funded by payroll taxes whereas SSI administrative costs come from the general revenue of the United States. In FY2005, SSDI administrative costs are

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[1] Lance Liebman, *Disability Appeals in Social Security Programs* (Washington: Federal Judicial Center, 1985), p. 1.

[2] Social Security Administration, *Annual Statistical Supplement to the Social Security Bulletin, 2005* (Washington: GPO, 2005), pp. 2. F5, 2.F6, 2.F8, 2.F9, 2.F11.

budgeted to be 2.6% of benefit payments whereas SSI administrative costs are budgeted to be 7.8% of benefit payments.[3]

The number of initial decisions reversed on appeal and the length and complexity of the disability appeals process also have a public policy impact. In establishing the SSDI and SSI programs, Congress set requirements for program participation and the receipt of benefits and charged the SSA with the task of providing that persons who meet these standards are given the benefits to which they are entitled. However, in many cases, this is either not occurring or occurring only after a lengthy delay and deserving beneficiaries, who by the very nature of their disability and work status are often among the least well-off in society, are forced to navigate a long and difficult process to receive their benefits. In other cases, persons who do not meet the statutory definition of disability are receiving benefits because of inaccurate determinations or appellate decisions.

To best provide readers with an understanding of the current disability determination and appeals processes as well as the changes to these processes proposed by the SSA, this report is organized into the following five major sections:

- The first section is an overview of the SSDI and SSI programs;
- The second section describes, in detail, the current disability determination and appeals processes;
- The third section provides a discussion of the issues surrounding these processes that have been raised by observers;
- The fourth section describes, in detail, the changes to these systems proposed by the SSA; and
- The final section provides a discussion of some of the issues raised regarding these proposed changes.

Social Security Disability Insurance and Supplemental Security Income

The SSA administers two programs, SSDI and SSI, that provide income and benefits to persons unable to work because of serious disabling conditions.[4] In both programs, disabled individuals must pass the same statutory test of disability as outlined in Titles II and XVI of the Social Security Act.[5]

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[3] Data taken from the Social Security Administration FY2005 President's Budget, available at [http://www.ssa.gov/budget/FactCard2005.pdf].

[4] For more information on the SSDI and SSI programs, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by April Grady and Julie M. Whittaker. (Hereafter cited as CRS Report RL32279).

[5] 42 U.S.C. §§ 423(d)(1) and 1382c. A person is disabled under the terms of the statute if he or she is unable to engage in any Substantial Gainful Activity (SGA, for 2005 earnings of $830 per month for non-blind persons and $1,380 per month for blind persons) because

(continued...)

The SSDI program pays benefits to disabled individuals under the provisions of Title II of the Social Security Act. SSDI benefits are paid to those who meet the statutory test of disability and have completed a five-month waiting period from the onset of disability.[6] Program beneficiaries must have a sufficient work history in employment covered by Social Security to qualify for benefits.[7] Benefits and administrative costs are paid out of the Social Security Disability Insurance Trust Fund, which is funded by a portion of the payroll taxes collected on earnings. There is no means test for the SSDI program. The SSDI program pays monthly benefits based on past earnings and, after two years, participants are eligible to receive Medicare hospitalization insurance (Part A) and purchase Medicare supplemental insurance (Part B) or enroll in a Medicare Advantage Plan.[8]

Under the provisions of Title XVI of the Social Security Act, disabled individuals and those 65 and older are entitled to benefits from the SSI program if they meet the statutory test of disability and have income and assets that fall below levels set by program guidelines. SSI benefits are paid out of the general revenue of the United States and all participants receive the same basic monthly benefit.[9] In most states, adults who collect SSI are automatically entitled to coverage under the Medicaid health insurance program.[10]

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[5] (...continued)
of a medically determinable physical or mental impairment. This impairment must be expected to result in the impaired person's death, or be expected to last at least 12 consecutive months. In addition, this impairment must prevent a person from engaging in his or her previous work or in any other work that exists in the national economy. The Supreme Court held in *Barnhart v. Thomas* 124 S. Ct. 376 (2003) that the previous work test does not require that an individual's prior job exists in the national economy.

[6] For more information on the five-month waiting period, see CRS Report RS22220, *Social Security Disability Insurance: The Five-Month Waiting Period for SSDI Benefits*, by Scott Szymendera.

[7] A detailed explanation of the insurance requirements can be found at [http://www.ssa.gov/dibplan/dqualify3.htm] and in CRS Report RL32279.

[8] For more information, see CRS Report RS22195, *Social Security Disability Insurance (SSDI) and Medicare: The 24-Month Waiting Period for SSDI Beneficiaries Under Age of 65*, by Julie M. Whittaker.

[9] The basic monthly federal benefit amount for 2005 is $579 for a single person and $869 for a couple. This amount is supplemented by 44 states and the District of Columbia. Arizona, Georgia, Kansas, Mississippi, the Commonwealth of the Northern Mariana Islands, Tennessee, and West Virginia do not offer a state supplement. A participant in the SSI program receives the federal benefit amount, plus any state supplement, minus any countable income. SSI benefits are not available to residents of Puerto Rico, Guam, or the United States Virgin Islands. Residents of these jurisdictions are eligible to receive federal benefits from their commonwealth or territorial government under provisions of Title XIV and Title XVI of the Social Security Act. These benefits are administered by the Department of Health and Human Services.

[10] Thirty-nine states, the District of Columbia, and the Commonwealth of the Northern Mariana Islands grant Medicaid eligibility to all adult SSI recipients, or have Medicaid eligibility rules that are the same as those of the SSI program. For more information, see (continued...)

The Disability Determination and Appeals Processes

Decisions on applications to SSDI and SSI require that evaluations be made about the severity of reported disabling conditions. These tasks are complicated by the fact that scholars and advocates continue to struggle to define the concept of disability, the nature of impairment, and how different conditions can limit essential life and work activities.[11] This differs from the Social Security retirement program, which needs only to confirm an applicant's age and insured status before paying out benefits.

Initial Determination

The disabled worker submits an application to the SSA. The evaluation of disability takes place in the appropriate state Disability Determination Services (DDS) office. The DDS is a state agency with state employees who evaluate SSDI and SSI applications according to federal guidelines. The DDS determines whether someone is disabled according to a five-step sequential evaluation process. Current work activity, severity of impairment, and vocational factors are assessed in that order. An applicant may be denied benefits at any step in the sequential process even if the applicant may meet a later criterion. For example, a worker that meets the medical listings for disability but earns an amount exceeding the Substantial Gainful Activity (SGA) earnings limit would be denied benefits at Step 1. The five steps are as follows and are depicted in **Figure 1**.

- Step 1. *Work test*. Is the individual working and earning over SGA? If yes, the application is denied. If no, the application moves to Step 2.

- Step 2. *Severity test*. Is the applicant's condition severe enough to limit basic life activities for at least one year? If yes, the application moves to Step 3. If not, the application is denied.

- Step 3. *Medical listings test*. Does the condition meet SSA's medical listings, or is the condition equal in severity to one found on the medical listings?[12] If yes, the application is accepted and benefits are awarded. If no, the application moves to Step 4.

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[10] (...continued)
[http://www.ssa.gov/work/ResourcesToolkit/Health/medicaid.html].

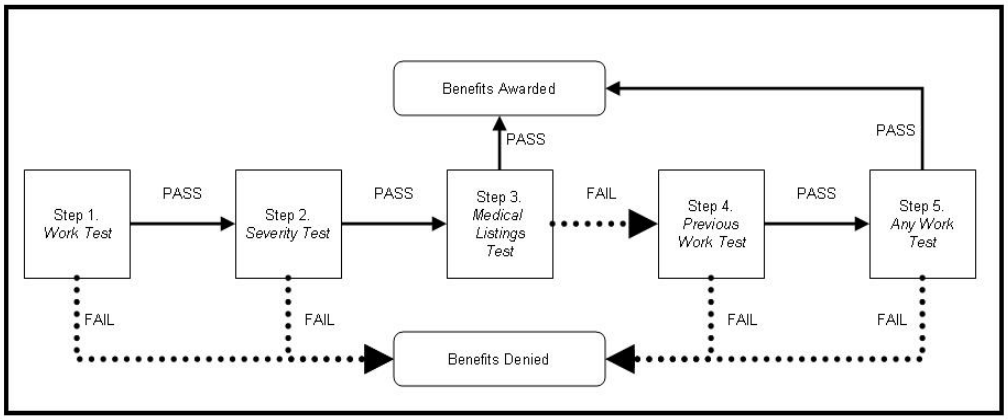
[11] For an overview of this debate, see Barbara M. Altman, "Disability Definitions, Models, Classification Schemes, and Applications," in Gary L. Albrecht, Katherine D. Seelman, and Michael Bury, *Handbook of Disability Studies* (Thousand Oaks, CA: Sage Publications, 2001).

[12] The medical listings can be found in the Social Security Administration publication *Disability Evaluation Under Social Security*, available at [http://www.ssa.gov/disability/professionals/bluebook/Entire-Publication1-2005.pdf]. This publication is commonly referred to as the *SSA Blue Book*. (Hereafter cited as *SSA Blue Book*.)

- Step 4. *Previous work test*. Can the applicant do the work he or she had done in the past? If yes, the application is denied. If not, the application moves to Step 5.[13]

- Step 5. *Any work test*. Does the applicant's condition prevent him or her from performing any other work that exists in the national economy? If yes, the application is accepted and benefits are awarded. If no, the application is denied.

Figure 1. The Five-Step Disability Determination Process



Source: The Congressional Research Service (CRS).

Meeting or exceeding the medical listings is the most common reason why applications to the SSDI and SSI programs are accepted. In 2002, over 44% of SSDI applicants and 53% of SSI applicants were admitted to the disability rolls because of successfully meeting the medical listing test (Step 3 of the five step evaluation process). Among those denied entry into the programs, the most common reason was for failing the any work test found in Step 5 with over 30% of all SSDI denials and 24% of all SSI denials occurring at this stage.[14] **Table 1** summarizes the reasons for final medical allowances. For example, 37.3% of those admitted into the SSDI program met the severity of the medical listings and an additional 7% of those admitted were judged to have a condition that is equal in severity to one found in the medical listings.

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[13] Cases of children applying for SSI benefits are not subject to the work test but instead to a test of functional capacity.

[14] Social Security Administration, *Annual Statistical Report on the Social Security Disability Insurance Program, 2003* (Washington: GPO, 2004), pp. 137-138; *SSI Annual Statistical Report, 2003* (Washington: GPO, 2004), pp. 123-124.

Table 1. Reason for Final Medical Allowance, 2002

(by year of application)

Program	Meets severity of listings	Equals severity of listings[a]	Medical and vocational factors combined	Other[b]
Social Security Disability Insurance (SSDI)	37.3%	7.0%	38.9%	16.8%
Supplemental Security Income (SSI)	38.8%	15.7%	24.4%	21.0%

Source: Table prepared by the Congressional Research Service (CRS) from data provided by Social Security Administration, *Annual Statistical Report on the Social Security Disability Insurance Program, 2003*, (Washington: GPO, 2004), p. 137; *SSI Annual Statistical Report, 2003* (Washington: GPO, 2004), p. 123.

a. Includes SSI child cases that functionally equal the level of severity of listings.
b. Includes cases in which a disability was previously established or for which no information is available.

Table 2 summarizes the reasons for final medical denials. For example, 16.9% of those denied entry into the SSDI program were denied because their impairments were not judged to be sufficiently severe.

Table 2. Reason for Final Medical Denial, 2002

(by year of application)

Program	Impairment did not or is not expected to last 12 months	Impairment not severe	Impairment does not cause severe functional limitations[a]	Able to do past work[b]	Able to do other type work[b]	Other[c]
Social Security Disability Insurance (SSDI)	9.1%	16.9%	—	27.9%	30.2%	16.0%
Supplemental Security Income (SSI)	5.8%	12.6%	17.8%	15.7%	24.2%	23.9%

Source: Table prepared by the Congressional Research Service (CRS) from data provided by Social Security Administration, *Annual Statistical Report on the Social Security Disability Insurance Program, 2003* (Washington: GPO, 2004), p. 138; *SSI Annual Statistical Report, 2003* (Washington: GPO, 2004), p. 125.

a. Used only for SSI applicants under the age of 18.
b. Applies only to SSI applicants over the age of 18 and all SSDI applicants.
c. Includes cases denied for reasons of substance abuse, cases in which an applicant did not supply sufficient information or failed to cooperate with regulations, cases in which an applicant returned to work during processing, and cases denied for unspecified reasons.

Hearings and Appeals

Applicants to the SSI and SSDI programs who are dissatisfied with the decisions of the DDS may appeal their cases. In FY2004, approximately 63% of applications to the SSI and SSDI programs were denied and nearly 35% of those denied filed an appeal of their denial.[15] The appeals process begins with a reconsideration of the decision, followed by an Administrative Law Judge hearing, a decision by the Appeals Council, and a hearing in the federal court system.

Reconsideration. After the initial denial by the DDS, an applicant may ask for a reconsideration by a different DDS officer in his or her state. During this first appellate stage, the entire application and record of the applicant is reviewed as if it were a new case. The SSA is currently running a prototype project in 10 states that eliminates this reconsideration step.[16] In FY2004, approximately 14% of cases reconsidered by the DDS resulted in a reversal of the previous denial of benefits.

Administrative Law Judge Hearing. If the applicant is not satisfied with the decision at the reconsideration stage, he or she may ask for a hearing before an SSA Administrative Law Judge (ALJ) within 60 days of the reconsideration decision. During this hearing, held either in person or via video conference, the applicant has the opportunity to present his or her case and any evidence to support the appeal. The SSA is not represented at this hearing and can not contest the applicant or the evidence. Although a case is officially closed after the decision of the ALJ, the ALJ does have some authority to reopen a case if new evidence is presented. In FY2004, 63% of cases heard by an ALJ resulted in a favorable decision for the claimant.

Appeals Council. The decision of the ALJ may be appealed by the applicant to the SSA Appeals Council within 60 days. The Appeals Council may either review a case or let the decision of the ALJ stand. The Appeals Council conducts a review of the ALJ hearing and decision and though the applicant may be present and give a statement, the Appeals Council does not conduct a formal hearing. The Appeals Council can decide to let the previous decision stand, remand the case back to an ALJ for a new decision, or reverse the decision of the ALJ. In FY2004, the Appeals Council ruled on only 4% of all initial applications and awarded benefits in 25% of these cases.

Federal Courts. The Appeals Council is the final administrative step in the SSA appeals process. Applicants dissatisfied with the decision of the Appeals Council or ALJ may file a case in the United States District Court within 60 days of the decision; an unfavorable decision in the District Court can be appealed to the United States Court of Appeals and United States Supreme Court. Less than 1% of all applications for benefits end up in the federal court system and only a handful of

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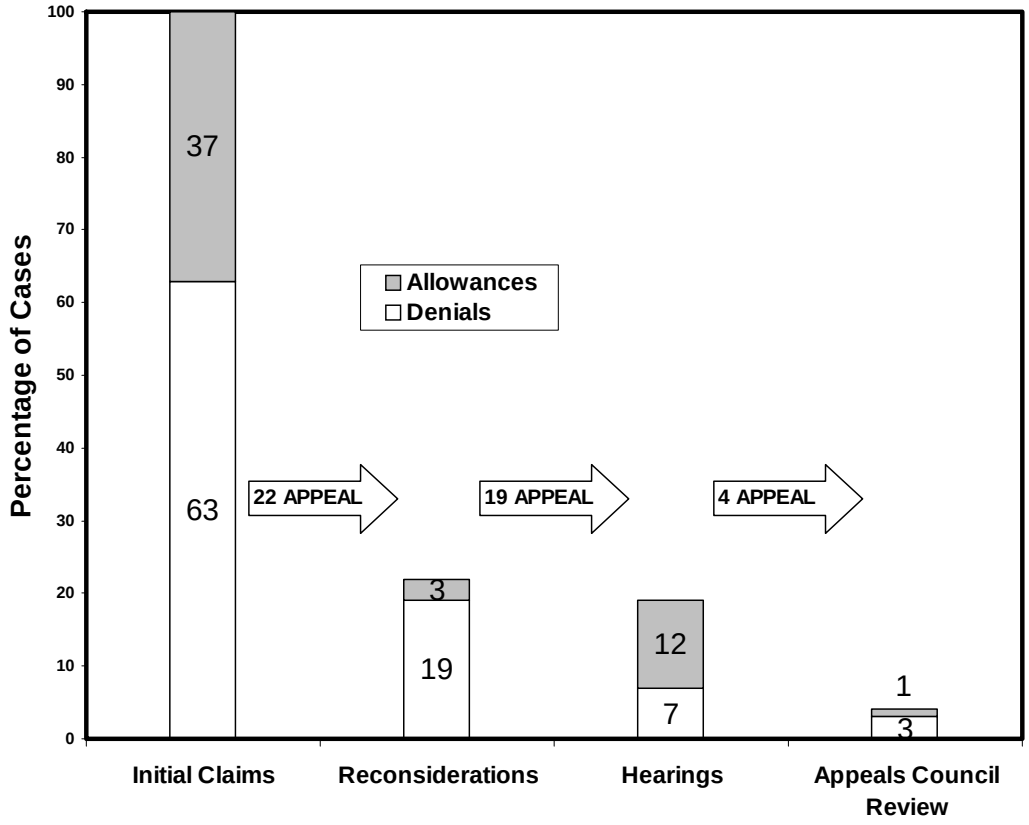
[15] Data taken from the website of the Social Security Administration and available at [http://www.ssa.gov/disability/disability_process_welcome_2004.htm].

[16] The Disability Redesign Prototype began in 1999 and is currently operating statewide in Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York and Pennsylvania; and in the Los Angeles area of California.

cases are appealed to the United States Court of Appeals.[17] The last petition for the *writ of certiorari* of a disability determination case granted by the United States Supreme Court came in 2003 in the case of *Barnhart v. Thomas*, and the denial of benefits in this case was upheld by the Court.[18]

Figure 2 summarizes the number of cases appealed at each stage of the process and is based on aggregate data for FY2004. During this fiscal year, 37 out of every 100 applications resulted in a favorable decision at the initial determination stage of the process. Of these 100 applicants, 22 appealed their initial denial to the reconsideration stage where 3 applications were accepted. Of the initial 100 applicants, 19 appealed to the ALJ stage and 4 appealed to the Appeals Council. Ultimately, of these 100 applications, 53 were awarded benefits, with 37 of those awards coming at the initial determination stage, 3 at the reconsideration stage, 12 at the ALJ stage, and 1 at the Appeals Council stage.

Figure 2. SSDI and SSI Appeals, FY2004



Source: The Congressional Research Service (CRS). Data taken from the SSA at [http://www.ssa.gov/disability/disability_process_welcome_2004.htm].

Note: Aggregate data for FY2004, not a tracking of individual cases.

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[17] Administrative Office of the United States Courts, *Federal Judicial Caseload Statistics, March 31, 2004* (Washington: GPO, 2005), pp. 30-34, 43-44.

[18] 124 S. Ct. 376 (2003).

Table 3 summarizes the allowance rate at each stage of the process for 2002. During that year, nearly 78% of SSDI and just over 64% of SSI cases heard by ALJ's resulted in allowances.

Table 3. Allowance Rates at Each Adjudicative Level, 2002

Program	Initial DDS	Reconsideration	ALJ Hearing and above
Social Security Disability Insurance (SSDI)	38.2%	10.5%	77.9%
Supplemental Security Income (SSI)	36.7%	10.1%	64.1%

Source: The Congressional Research Service (CRS). Table from data provided by Social Security Administration, *Annual Statistical Report on the Social Security Disability Insurance Program, 2003*, (Washington: GPO, 2004), pp. 136-138; *SSI Annual Statistical Report, 2003* (Washington: GPO, 2004), pp. 117-119.

Issues Surrounding the Current Processes

Researchers and others, including the nonpartisan Social Security Advisory Board,[19] have raised the following issues with respect to the disability determination and appeals process:

- timeliness,
- accuracy, and
- national consistency of the decisions made.

In addition, the Commissioner of Social Security has testified about the problems caused by the lack of timeliness and the number of initial decision reversed on appeal in the current processes.[20]

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[19] The Social Security Advisory Board was created in 1994 with the passage of the Social Security Independence and Program Improvements Act of 1994, P.L. 103-296. The Board is made up of seven members who serve six year staggered terms. Three members of the Board are appointed by the President with the advice and consent of the Senate with no more than two of these members being from the same political party. Two members, one from each party are appointed by the President *pro tempore* of the Senate with the advice of the Chairman and Ranking Member of the Committee on Finance. Two members, one from each party, are appointed by the Speaker of the House with the advice of the Chairman and Ranking Member of the Committee on Ways and Means.

[20] U.S. Congress, House Committee on Ways and Means, Testimony Social Security Commissioner, Jo Anne B. Barnhart, *Social Security Administration's Management of the Office of Hearings and Appeals*, hearings, 108th Cong. (2003).

Timeliness

Some observers, including the Social Security Advisory Board, are concerned about the length of time involved in the entire disability determination and appeals processes.[21] In addition, the Government Accountability Office (GAO) and others have commented that the length of the determination and appeals process is a contributing factor to the historically low return to work rates of SSDI and SSI beneficiaries.[22] Although successful applicants can receive benefits retroactive to the date of application, during the determination and appeals processes they are not working and receive no medical or cash benefits through the SSDI or SSI programs.

In FY2004, applicants waited an average of 95 days for an initial determination of their disability status from the state DDS agency. Reconsiderations by the DDS took an average of 97 additional days. After requesting a hearing before an ALJ, claimants waited an average of 394 days before getting a decision and the wait or a decision from the Appeals Council took an average of 251 additional days. When time spent on due process concerns and making appointments is included, a disability claim that was considered at each stage of the determination and appeals processes averaged 1,048 days to be resolved by the SSA.[23]

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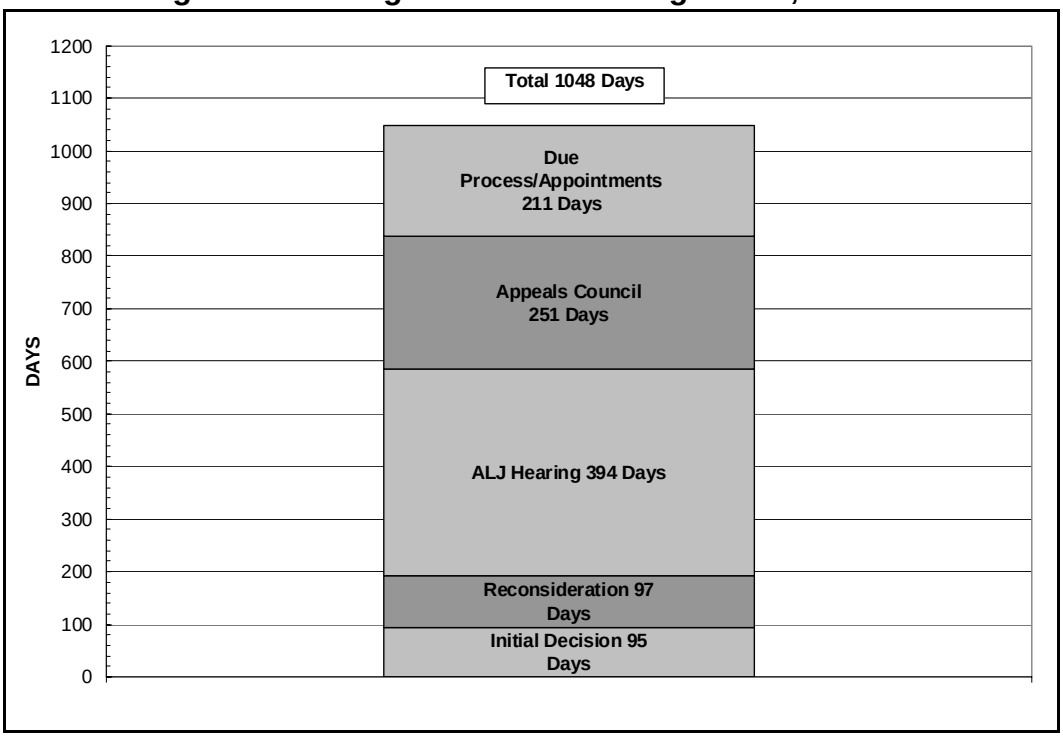
[21] General Accounting Office, *SSA Disability Redesign: Focus Needed on Incentives Most Crucial to Reducing Costs and Time, GAO /HEHS-97-20* (Washington: GPO, 1997); General Accounting Office, *Social Security Disability: Disappointing Results from SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention* (Washington: GPO, 2002); Social Security Advisory Board, *How SSA's Disability Programs Can be Improved* (Washington: GPO, 1998).

[22] Monroe Berkowitz, "Improving the Return to Work of Social Security Disability Beneficiaries," in Jerry L. Mashaw, et al., Disability Work and Cash Benefits, (Kalamazoo, MI: W. E. Upjohn Institute for Employment Research, 1996); Richard V. Burkhauser and David Wittenburg, "How Current Disability Transfer Policies Discourage Work: Analysis from the 1990 SIPP," *Journal of Vocational Rehabilitation*, vol. 7 (1996), pp. 9-27; General Accounting Office, *SSA Disability: Program Redesign Necessary to Encourage Return to Work, GAO/HEHS 96-62* (Washington: GPO, 1996); General Accounting Office, *Social Security: Disability Programs Lag in Promoting Return to Work, GAO/HEHS-97-46* (Washington: GPO, 1997); Joann Sim, "Improving Return-to-Work Strategies in the United States Disability Programs, With Analysis of Program Practices in Germany and Sweden," *Social Security Bulletin*, vol. 59, no. 3 (1999), pp. 41-50.

[23] Social Security Administration, *Fiscal Year 2004 Performance and Accountability Report* (Washington: GPO 2005), p. 17.

Figure 3. Average Case Processing Times, FY2004



Source: CRS figure from data provided by Social Security Administration, *Fiscal Year 2004 Performance and Accountability Report* (Washington: GPO, 2005), p. 17.

Note: Due Process/Appointments includes time taken by applicants to file appeals and make appointments and can occur at any stage in the process.

Accuracy

Ensuring that initial and appellate disability decisions, both allowances and denials, are accurate is one of the key goals identified by the SSA in its *FY2004 Performance and Accountability Report.* Using data from its own internal quality assurance system, which re-examines a sample of decided cases, the SSA estimates that 96.5% of initial disability determinations were accurate based on the evidence presented at the time of the determination. The SSA also reports that the accuracy rate for decisions made by Administrative Law Judges is 90%.[24] Despite this assertion, in 2003, Administrative Law Judges, the Appeals Council, and the Federal Courts reversed initial decisions in over 78% of the SSDI cases they heard and 64% of the SSI cases they heard.[25] In many cases, this is due to additional evidence not presented at the initial determination stage.

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[24] Social Security Administration, *FY2004 Performance and Accountability Report* (Washington: GPO, 2005), pp. 91-92.

[25] Social Security Administration, *Annual Statistical Report on the Social Security Disability Insurance Program, 2003* (Washington: GPO, 2004), pp. 134-136; *SSI Annual Statistical Report, 2003* (Washington: GPO, 2004), pp. 117-122.

Some researchers have suggested that SSA disability decisions are not as accurate as the agency claims they are. An external study commissioned by the SSA in 1994 found serious flaws in the quality assurance process at the agency.[26] In addition, a 2004 report that used self-reported disability data to examine the accuracy of initial and appellate decisions between 1992 and 1996 concluded that approximately 20% of SSI and SSDI applicants from that time period who ultimately received benefits were not disabled, while 60% of those ultimately denied benefits were disabled.[27]

Inconsistency Across States

Initial disability determinations for SSDI and SSI applicants are made by independent state DDS offices. Although these offices are funded by the SSA, disability determinations are made by state employees. These state employees make determination decisions based on the statutory definition of disability found in Titles II and XVI of the Social Security Act and the Social Security publication *Disability Evaluation Under Social Security*.[28] Despite this federal guidance, the Social Security Advisory Board has found inconsistencies across the states in

- DDS allowance rates;
- rates of reversal of DDS decisions on appeal; and
- DDS employee pay and productivity.

Although there is evidence that disability rates vary by state, differences in the reversal rates on appeal of state DDS decisions point to some inconsistencies at the initial determination level.[29] Data on state variation in DDS determinations and reversal rates can be found in **Table 4**. For example, 59% of SSI applications were approved in the initial decision stage by the DDS in New Hampshire, compared to 27% in West Virginia.

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[26] The Lewin Group, Inc., Paul Ettinger McCarthy Associates, L.L.C., and Cornell University, *Evaluation of SSA's Disability Quality Assurance (QA) Processes and Development of QA Options That Will Support the Long-Term Management of the Disability Program: Final Report* (Falls Church, VA: The Lewin Group, Inc., 2001).

[27] Hugo Benitez-Silva, Moshe Buchinsky, and John Rust, *How Large Are the Classification Errors in the Social Security Awards Process? NBER Working Paper 10219* (Cambridge, MA: National Bureau of Economic Research, 2004).

[28] *SSA Blue Book.*

[29] John L. McCoy, Miles Davis, and Russell E. Hudson, "Geographic Patterns of Disability in the United States," *Social Security Bulletin*, vol. 57, no. 1, (1994), pp. 25-36; William J. Nelson, Jr., "Disability Trends in the United States: A National and Regional Perspective," *Social Security Bulletin*, vol. 57, no. 3 (1994), pp. 27-41.

Table 4. State Variation in Disability Allowance and Reversal Rates, 2000

	SSI Initial Decision Allowance Rate	SSDI Initial Decision Allowance Rate	Administrative Law Judge Reversal Rate
Highest state	59% (NH)	65% (NH)	86% (ME)
Median	39%	45%	66%
Lowest state	27% (WV)	31% (TX)	35% (DC)

Source: The Congressional Research Service (CRS). Data taken from Social Security Advisory Board, *Disability Decision Making, Data and Materials* (Washington: GPO, 2001), pp. 51, 70.

Note: Reversal rates do not account for dismissed cases.

Table 5 provides data on DDS pay and productivity. In the table, disability examiners in Connecticut were the highest paid in the country with average salaries of $70,000.

Table 5. State Variation in Disability Examiner Pay and Productivity

	Average Disability Examiner annual salary, FY1999	Decisions per staff year, FY2000
Highest State	$70,000 (CT)	356 (MS)
National Average	$45,000	250
Lowest State	$30,000 (SD)	196 (MI)

Source: The Congressional Research Service (CRS). Data taken from Social Security Advisory Board, *Disability Decision Making, Data and Materials* (Washington: GPO, 2001), pp. 64, 67.

Note: Decisions per staff year is calculated as total number of decisions made divided by the number of employees.

Proposed Changes to the Disability Determination and Appeals Processes

On May 25, 2003, Commissioner of Social Security, Jo Anne B. Barnhart, announced in testimony to the House Committee on Ways and Means that the SSA would undertake fundamental reform of the disability determination and appeals processes. This reform effort has two stated goals:

- To make the right decision as early in the process as possible; and

- To foster return to work at all stages of the process.[30]

After announcing this new reform effort, the Commissioner met with several Members of Congress and organizations representing people with disabilities, beneficiaries, claimants' attorneys, and SSA and DDS employees. Based on these meetings, the initial reform plan discussed in 2003 was slightly revised and new rules were proposed. These proposed new rules would make a series of changes to the current Social Security disability determination and appeals processes used by applicants to the SSI and SSDI programs. **Figure 4**, in the **Appendix**, contains a graphical overview of the proposed disability adjudication and appeals processes.

Timetable

The proposed changes to the disability determination and appeals processes were formally introduced, in the form of a Notice of Proposed Rulemaking, in the *Federal Register* on July 27, 2005. As required by the Administrative Procedures Act,[31] the SSA gave the public 90 days from the date of the NPRM to submit comments on the rules. This public comment period ended on October 25, 2005. In her hearing testimony, the Commissioner indicated that the SSA will review these comments and expects to announce final rules that incorporate them sometime in January, 2006. These rules would then be implemented during the Spring of 2006. The NPRM states that this implementation would begin in one of the smaller of the SSA's geographical regions. The Commissioner testified that the SSA would wait at least one year after implementation in one region before implementing the new rules nationwide and would use this time to evaluate the impact of the new rules. Each stage of the proposed new processes is discussed in detail below.

Proposed Quick Disability Determination (QDD)

All initial disability claims would be screened by the SSA, and those deemed likely to meet the statutory definition of disability and to have readily available supporting evidence would be transferred to a Quick Disability Determination (QDD) unit established in each state. The unit would have 20 days to evaluate each case and either award benefits or transfer the case back to the state DDS for standard processing. All positive determinations made by this unit would be made in consultation with a medical or psychological expert who meets a set of standards established by the SSA. This differs from the current process, which has no expedited system for handling cases likely to meet the definition of disability.

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[30] Testimony of Social Security Commissioner Jo Anne B. Barnhart, in U.S. Congress, House Committee on Ways and Means, *Social Security Administration's Management of the Office of Hearings and Appeals*, hearings, 108th Cong., 1st sess., Sept. 25, 2003, Serial No. 108-40 (Washington: GPO, 2003).

[31] 5 U.S.C. § 553.

Proposed Federal Expert Unit (FEU)

A Federal Expert Unit (FEU) would be established to assist with disability determinations at all levels of the administrative process. The FEU would be operated by the SSA and would oversee a national network of medical and vocational experts that would meet specific standards set by the SSA. The FEU, or experts from the national network, would serve as consultants at all levels of the administrative process. Experts currently employed by DDS agencies would be eligible to join the national network if they meet the standards set by the SSA. The goal of the FEU and the national network is to ensure that decision-makers at all stages of the determination and appeals processes have access to experts who meet one set of consistent national standards. This differs from the current process in which each DDS agency is free to use their own experts who do not have to meet any national standards.

Proposed Initial Disability Determination

Cases not decided by the Quick Disability Determination Unit would be processed by state disability determination services agencies. With the exception of the assistance of the FEU, this process would remain unchanged.

Proposed Federal Reviewing Official (RO)

The current reconsideration step would be eliminated and replaced with a review by a Federal Reviewing Official (RO). The RO would be a lawyer and an employee of the SSA. An applicant dissatisfied with the decision of the state DDS would be able to request a review by the RO. The RO would review the decision of the DDS but would not hold a hearing or meet with the applicant in person. The RO could collect evidence and order a consultative examination with the assistance of the FEU. The RO could reverse, remand, modify, or affirm the decision of the DDS. In cases where the RO would reverse the decision of the DDS, the evidence in the case would have to be reviewed by the FEU. All decisions made by the RO would have to be in writing and would be sent to the DDS and used by the SSA for quality control purposes.

Proposed Closing of the Record After the ALJ Hearing

Applicants dissatisfied with the decision of the RO would continue to be able to request a hearing before an ALJ. As is currently the case, this would be a *de novo* hearing in which the applicant could bring forward any new evidence that he or she feels is material. However, an applicant would be required to present all evidence to the ALJ no later than 20 days before the date of the hearing. In most cases, the decision of the ALJ would be final and would close the record. With limited exceptions, no new evidence could be considered after the decision of the ALJ had been made. The decision of the ALJ would have to be in writing and would have to specify why the ALJ agrees or disagrees with the decision of the RO.

Proposed Decision Review Board

The Appeals Council would be eliminated and replaced by a Decision Review Board made up of experienced ALJs and other adjudicators appointed to staggered terms by the SSA. The Decision Review Board would not review cases decided by ALJs on appeal, but would use a computer screening model to identify ALJ decisions likely to contain errors or likely to result in a review by the federal courts. The Decision Review Board would have the authority to affirm, modify, or reverse the decisions of ALJs, even when those decisions were favorable to applicants. Cases dismissed by the ALJ would be heard by the Decision Review Board on appeal because these cases are not subject to review by the federal courts.[32] The decision of the Decision Review Board would be in writing and would specify the reasons for the decision. The Decision Review Board would have 90 days to rule on any case. After 90 days, if no ruling is made, the decision of the ALJ stands.

Proposed Judicial Review

A claimant dissatisfied with the decisions of either the ALJ or the Decision Review Board would retain his or her current right to ask for a judicial review of the SSA's decision in the United States District Court. Claimants would have 90 days from the date of the ALJ decision, rather than the current 60 days, to file for this review.

Issues Surrounding the Proposed Rules

On September 27, 2005, the Subcommittees on Human Resources and Social Security of the House Committee on Ways and Means held a joint hearing on the proposed changes to the disability determination and appeals processes.[33] Representatives from the judicial, disability advocacy, and legal communities testified as to the strengths and weaknesses of the proposed changes.[34] This testimony, and the public statements of the groups, raised three dominant issues as having the potential to negatively affect persons with disabilities as they navigate the proposed determination and appeals processes. The issues include

- the imposition of additional time limits on applicants;
- the closing of the record after the ALJ hearing; and
- the elimination of the Appeals Council.

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[32] The ALJ may make a decision on a case or dismiss it entirely. Dismissals can not be appealed to the federal courts.

[33] U.S. Congress, House Committee on Ways and Means, Subcommittee on Human Resources and the Subcommittee on Social Security, *Joint Hearing on Commissioner of Social Security's Proposed Improvements to the Disability Determination Process*, 109th Cong., 1st sess., Sept. 27, 2005 (not yet available).

[34] A complete list of witnesses and copies of all testimony is available on the website of the House Committee on Ways and Means at [http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=442&comm=4].

Proposed Additional Time Limits for Applicants

The proposed rules include several binding time limits that applicants would have to follow; otherwise, they would lose the right to pursue their appeals or present evidence in support of their cases. Although these time limits are designed to shorten the length of the appeals process, they could limit the current flexibility applicants have to schedule hearings and prepare their cases. The National Organization of Social Security Claimants' Representatives (NOSSCR), a group that represents lawyers who handle disability appeals, fears that these time limits could become "procedural traps" for claimants who do not have legal representation.[35]

The proposed rules would add the following time limits:

- 10 days from the receipt of a notice of the date of an ALJ hearing to object to the time or place of the hearing;[36]
- 10 days to object to the issues specified in the notice of the ALJ hearing;[37]
- 20 days before the date of an ALJ hearing to request that witnesses be subpoenaed;[38]
- 10 days to submit new evidence after the decision of the ALJ;[39]
- 10 days after a case is dismissed to ask the ALJ to vacate the dismissal;[40] and
- 10 days from the receipt of a notice that the Decision Review Board will review a case to submit a written statement to the Decision Review Board.[41]

None of the proposed time limits could be waived by an ALJ, and none of the proposed rules include any provisions for a good cause or other extension.

Proposed Evidentiary Time Limit. In addition to the time limits mentioned above, the new rules propose a time limit for the submission of evidence to an ALJ. Section 205 of the Social Security Act provides that the decision of an ALJ shall be

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[35] National Organization of Social Security Claimants Representatives, *NOSSCR Comments on Proposed Changes to Disability Claim Review Process*, Oct. 25, 2005, available on NOSSCR's website at [http://www.nosscr.org/NOSSCRdibfinal.pdf].

[36] 20 CFR § 405.317 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

[37] Ibid.

[38] 20 CFR § 405.332 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

[39] 20 CFR § 405.373 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

[40] 20 CFR § 405.382 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

[41] 20 CFR § 405.425 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

made "on the basis of evidence adduced at the hearing."[42] Current regulations do not specify any timetable for the submission of evidence and allow the ALJ to make a judgement based on evidence presented before a hearing or during the hearing itself.

The proposed rules would require that all evidence be submitted by a claimant no later than 20 days before the date of an ALJ hearing. Under this proposed rule, a claimant would not be given the opportunity to present new evidence at the hearing and evidence submitted after the 20-day deadline would not be considered unless the ALJ believes that the claimant had good cause, as specified in the new rules, for missing the deadline.

The Consortium for Citizens with Disabilities and NOSSCR both raised concerns at the hearing that claimants could be penalized for an inability to gather medical evidence in time, even if this delay was through no fault of their own.[43] In addition to the procedural burden this deadline might place on a claimant, NOSSCR believes that this rule violates the "adducement" clause of the Social Security Act and previous rulings of the United States Court of Appeals that have required ALJ's to fully develop the record of a case before making a decision.[44]

Proposed Changes to the Right of a Claimant to Have a Case Reopened After an ALJ Decision

The new disability determination and appeals processes proposed in the NPRM would significantly change the rights of claimants to have their cases reopened after the decision of an ALJ, with the goal of bringing some finality to the administrative phase of the appeals process. Several witnesses at the hearing testified as to the hardship this could place on applicants who have legitimate claims for benefits but who are unable to submit evidence in time to have it considered.[45]

Current Rules to Reopen a Case.[46] Under the current rules, the decision of the ALJ can be reopened either at the request of the SSA or the claimant. The

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[42] 405 U.S.C. 405(b)(1).

[43] *Commissioner of Social Security's Proposed Improvements to the Disability Determination Process, Joint Hearing Before the Subcommittee on Human Resources and the Subcommittee on Social Security, House Committee on Ways and Means*, 109th Cong. (2005), (statement of Marty Ford, Consortium for Citizens with Disabilities and statement of Thomas D. Sutton, National Organization of Social Security Claimants' Representatives).

[44] National Organization of Social Security Claimants Representatives, *NOSSCR Comments on Proposed Changes to Disability Claim Review Process*, October 25, 2005, available on NOSSCR's website at [http://www.nosscr.org/NOSSCRdibfinal.pdf].

[45] *Commissioner of Social Security's Proposed Improvements to the Disability Determination Process, Joint Hearing Before the Subcommittee on Human Resources and the Subcommittee on Social Security, House Committee on Ways and Means*, 109th Cong. (2005), (statement of Marty Ford, Consortium for Citizens with Disabilities, statement of Thomas D. Sutton, National Organization of Social Security Claimants' Representatives, and statement of Frank S. Bloch, Vanderbilt University School of Law).

[46] 20 CFR §§ 404.987-404.989.

SSA or the claimant can request that an ALJ reopen a case for any reason if the request is made within 12 months of the initial ALJ decision. In addition, the SSA or the claimant can request that an ALJ reopen a case at any time, up to four years after the initial decision, if there is good cause as defined in the regulations. "Good cause" is defined as occurring when one of the following has occurred:

- New and material evidence is furnished;
- A clerical error in the computation of benefits was made; or
- The evidence clearly shows that an error was made.

Proposed Rules to Reopen a Case.[47] The rules proposed by the SSA would restrict the rights of claimants to request that cases be reopened after the decision of the ALJ. Claimants would have a much shorter time in which to ask for a reopening and would only be able to submit new evidence if their conditions changed after the hearing. New evidence relating to a disability that existed at the time of the hearing would not be sufficient to reopen a case.

Under the proposed rules, claimants would have 10 days from the date of the ALJ decision to request that a case be reopened. In addition, the claimant must show that one of the following circumstances has occurred:

- An unforeseen and material change in the applicant's condition between the end of the hearing and the date of the decision;
- At the hearing the ALJ allowed the applicant to submit evidence after the decision; or
- The applicant had good cause for missing the deadline to submit evidence to the ALJ.

For the purposes of this proposed rule, "good cause" is defined as occurring when one of the following has occurred:

- The actions of the SSA were misleading;
- The applicant has a physical, mental, educational, or linguistic limitation that would prevent a reasonable person from compliance; or
- Some other unusual or unavoidable circumstance beyond the control of the applicant prevented compliance.

Claimants unable to get their cases reopened by the ALJ would have to appeal to the federal courts or reapply for benefits.

Proposed Replacement of the Appeals Council with the Decision Review Board

The proposed rules would replace the existing Appeals Council with the Decision Review Board and would limit the right of claimants to appeal decisions

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[47] 20 CFR §§ 405.20, 405.373 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

made by ALJs to this new board, with the goal of bringing finality to the appeals process after the decision of the ALJ. The Decision Review Board would retain the own-motion authority to review favorable and unfavorable ALJ decisions.

The Judicial Conference of the United States, made up of federal judges, has expressed concern that eliminating the Appeals Council will increase the number of cases being filed in the United States District Courts. Because the federal courts lack the specific expertise and experience in handling disability cases that the Appeals Council has, the Conference recommends that the Appeals Council, in its current form, be retained to serve as a final level of administrative appeal for claimants dissatisfied with the decision of an ALJ.[48]

Rights of Claimants to Appeal.

Current Rules, the Appeals Council.[49] Under the current rules, the final administrative appeal offered to claimants is a review by the Appeals Council. Claimants dissatisfied with the decision of an ALJ or with the dismissal of their case by an ALJ have up to 60 days from the date of the decision to request a review of their case by the Appeals Council. Unlike the ALJ, the Appeals Council is not required to hear all appeals that are filed and can select the cases that it wishes to consider.

Proposed Rules, the Decision Review Board.[50] Under the proposed rules, the Appeals Council would be replaced by a Decision Review Board, which would constitute the final administrative appeal offered to claimants. However, unlike the Appeals Council, claimants dissatisfied with the *decision* of an ALJ would not have the right to request a review by the Decision Review Board. Only claimants whose cases were *dismissed* by an ALJ would have the right to request a review. Similar to the Appeals Council, the Decision Review Board would set its own docket and not be required to rule on all cases presented to it on appeal.

Own Motion Authority of the SSA.

Current Rules, the Appeals Council.[51] Under the current rules, the Appeals Council has the authority to review cases that have not been appealed by claimants. These cases can include decisions of an ALJ that were favorable to claimants. However, in such cases, the claimant can be paid interim benefits while the Appeals Council considers the case.

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[48] *Commissioner of Social Security's Proposed Improvements to the Disability Determination Process, Joint Hearing Before the Subcommittee on Human Resources and the Subcommittee on Social Security, House Committee on Ways and Means*, 109th Cong. (2005), (statement of the Honorable Judge Howard D. McKibben, Judicial Conference of the United States).

[49] 20 CFR §§ 404.911, 404.968.

[50] 20 CFR §§ 405.382, 405.405 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

[51] 20 CFR § 404.969.

Proposed Rules, the Decision Review Board.[52] Like the Appeals Council, the Decision Review Board would have the authority to review ALJ decisions, including those decisions that were favorable to claimants. However, no provision exists in the proposed rules for interim payments to claimants while their cases are being reviewed by the Disability Review Board.

Evidence Rules and Procedures.

Current Rules, the Appeals Council.[53] Under the current rules, the Appeals Council considers all evidence previously presented to the ALJ and any new evidence that relates to the period before the ALJ hearing. Claimants may request to appear before the Appeals Council and present an oral argument in support of their case.

Proposed Rules, the Decision Review Board.[54] Because the record is considered closed after the decision of the ALJ, the Decision Review Board could only consider evidence presented to the ALJ and could not consider new evidence. Claimants would not be permitted to present an oral argument to the Decision Review Board but could request permission to submit a brief written statement.

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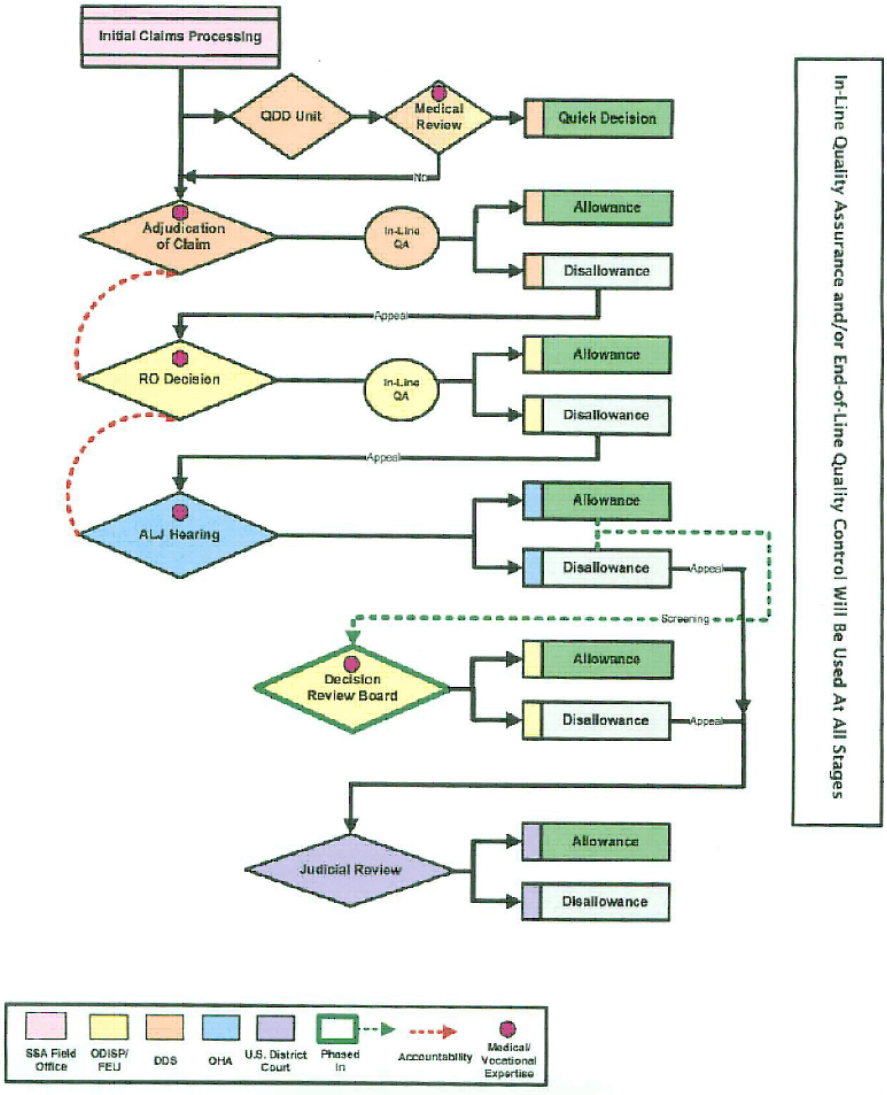
[52] 20 CFR §§ 405.410, 405.415 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

[53] 20 CFR § 404.976.

[54] 20 CFR § 405.425 (proposed in Administrative Review Process for Adjudicating Initial Disability Claims, 70 *Federal Register* 43590, July 27, 2005).

Appendix

Figure 4. Proposed Disability Determination and Appeals Processes



Source: The Social Security Administration, available at [http://www.ssa.gov/disability-new-approach/NewApproachFlowchart.pdf].

Note: A detailed diagram of the existing determination and appeals processes is available on the SSA website at [http://www.ssa.gov/disability/disability_process_files/od_process.pdf].